

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: August 24, 2017
CRM-M-7568 of 2017 (O&M)

Pargat Singh and another

.....Petitioners

Versus

Pipal Singh and another

.....Respondents

CRM-M-7213 of 2017 (O&M)

Resham Singh

.....Petitioner

Versus

Pipal Singh and another

.....Respondents

CRM-M-5711 of 2017 (O&M)

Tarsem Singh

.....Petitioner

Versus

Pipal Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. P.P.S. Duggall, Advocate
for the petitioner(s) (in all the petitions).

Mr. Nakul Sharma, Advocate
for respondent No.1 (in all the petitions).

Mrs. Rajni Gupta, Addl. AG Punjab.

A.B. CHAUDHARI, J (Oral)

By this common order, above said all three petitions are
being disposed of.

In these petitions, the petitioners-complainant have prayed
for setting aside the revisional order dated 11.01.2017 (Annexure P-5)
made by the Sessions Court, Ferozepur reversing the order dated

09.12.2016 (Annexure P-3) of the trial Court, which had declined to grant regular bail to respondent No.1-Pipal Singh and in revision granted bail to respondent No.1.

The petitioners in these petitions claim that they are the aggrieved persons who had invested money in the companies floated by respondent No.1 and his relatives including his wife, with a promise to repay money with interest by way of Fixed Deposit Receipts. According to the petitioners, respondent No.1, in collusion with his wife and other directors of the companies, have cheated the investors and fraud goes to around ₹5,000 crores and money from various investors was collected by them and was never returned to them much less with interest. FIRs in the present cases were lodged also on secret information with the police and accordingly, police swung into action. According to the petitioners, prosecution investigation is on and by this time, around 11771 persons who have been cheated by respondent No.1 and others have come forward to lodge FIRs against respondent No.1-Pipal Singh. It is estimated, according to the State, persons numbering 11711 have been victims of fraud and cheating. Respondent No.1-Pipal Singh and others were arrested during investigation by the police and the investigation is still on as day in and day out, the victims have been coming to the police making grievance about the way they were cheated by respondent No.1 and others. In the present FIR, challan was filed by the police before the trial Court. According to the petitioners, respondent No.1,

after release on regular bail granted by the revisional Court, got lodged false FIRs against the petitioners in order to pressurize them to withdraw complaint. Not only that, according to the petitioners, they have been threatened by respondent No.1. After the trial commenced, respondent No.1 applied to the trial Court for grant of regular bail under Section 437(6) of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.'), on the ground that since 60 days were completed and the trial had not been concluded, he was entitled to grant of regular bail. The trial Court rejected the said application by making a reasoned order. That order was challenged by respondent No.1 before the learned Additional Sessions Judge, Ferozepur by way of revision. Learned Additional Sessions Judge, Ferozepur allowed the revision and set aside the order of the trial Court declining to grant regular bail to respondent No.1 and ordered release of respondent No.1 on regular bail, holding that the provision of Section 437(6) Cr. P.C. is mandatory. It is the said revisional order, which is under challenge in these petitions.

In support of these petitions, learned counsel for the petitioners, Shri P.P.S. Duggall, vehemently argued that only point that falls for consideration of this Court is whether provision of Section 437(6) Cr. P.C. is mandatory or directory and whether, consequently, the revisional order reversing the order of the trial Court declining regular bail to respondent No.1 is legal, correct and proper. In support of his submission, he cited several judgments of various High Courts.

He also took me through the FIR as well as investigation report filed by the State. Learned State counsel also pointed out from the investigation papers that fraud committed by respondent No.1 in collusion with others including his wife has been huge and large number of people have been cheated. She has also pointed out the action taken by the police from time to time including seizure of the cars, various properties purchased under sale-deeds by respondent No.1 in Madhya Pradesh and so and so forth with the money that was collected from the investors and that the money collected by respondent No.1 and others was never given back to them. Learned State counsel, therefore, supported the petition and submitted that looking to the magnitude of the money of investors collected by respondent No.1 and the large number of people having been cheated by respondent No.1 and others, regular bail granted to respondent No.1 will have to be cancelled as there is every likelihood of respondent No.1 using his ill-gotten money for destroying the prosecution evidence by tampering the same.

Learned counsel for the petitioners relied on many decisions, but I will consider only the relevant decisions.

Per contra, learned counsel for respondent No.1 vehemently opposed the petitions for cancellation of bail and submitted that the petitions at the instance of the petitioners are not maintainable because FIRs were not lodged by them. He, then submitted that they have no *locus standi* to file the present petitions.

Learned counsel for respondent No.1 then submitted that the reasons given by the learned trial Court are completely wrong and illegal and therefore, revisional Court rightly interfered with the said order and granted bail to respondent No.1 since the provision of Section 437(6) Cr. P.C. is held to be mandatory by some of the High Courts. He, then submitted that respondent No.1 got automatic statutory right of regular bail after the period of 60 days as contemplated by Section 437(6) Cr. P.C. Holding the said provision as directory, the valuable right under Article 21 of the Constitution of India to be at liberty cannot be violated. He has invited my attention to the objections filed by him in this Court to the petitions.

I have gone through the reply/objections filed by respondent No.1, I find that one of the grounds raised by respondent No.1 is that there is no delay which can be attributed to respondent No.1 for which trial is not being completed within 60 days. The next submission is about the decision of the Supreme Court in the case of **Sanjay Chandra versus CBI**, 2011(4) R.C.R. (Criminal) 898 that the gravity of the offence alone cannot be taken into consideration for keeping the accused in custody as a punitive measure. He also relied on judgment of this High Court in the case of **Sukhdev Singh versus State of Punjab**, 2009(3) R.C.R. (Criminal) 291. He therefore, prayed for dismissal of these petitions.

Learned counsel for respondent No.1 has cited several decisions and I would refer relevant decisions only.

I have gone through the written statement filed by respondent No.1. Having heard learned counsel for the rival parties and having gone through the entire record, I find that it necessary to quote relevant portion from the status report by way of affidavit of Vibhor Kumar, PPS, Deputy Superintendent of Police (City), Ferozepur, that was filed by the prosecution in these petitions, which read thus:-

“2. That preliminary investigation of above said FIR was conducted by ASI Balwinder Singh No.140/FZR and during the course of investigation, three more persons namely Gurkirat Singh son of Pipal Singh, Avtar Singh s/o Anokh Singh and Gurpreet Singh s/o Anokh Singh were added as accused in above said FIR, out of which, accused Gurpreet Singh was arrested on 16.02.2016 and on 12.04.2016, challan was presented against him in the Court of learned Illaqa Magistrate, similarly, petitioner Pipal Singh was arrested on 01.06.2016 and 103 sale deeds in respect of huge parcel of land stipulated outside Punjab State, having been purchased in the name of his company, have been recovered from him. A sum of Rs.11,70,000/- with regard to fraud committed by petitioner Pipal Singh and others with the complainant of present FIR is involved in the present case. Accordingly, on 29.07.2016, supplementary challan was presented against petitioner Pipal Singh in the Court of learned Illaqa Magistrate, Ferozepur and charge is yet to be framed against the petitioner, whereas accused Surinder Kaur, Gurkirat Singh and Avtar Singh are yet to be arrested and best efforts are being made to arrest them.

3. That the petitioner Pipal Singh is also involved in three other FIRs with regard to same very allegations of committing fraud with general public, the brief detail of the said FIRs is as under:-

Sr. No.	FIR No.	Date	Offence U/s	Police Station
1	191	26.9.2015	420/120-B IPC	City Ferozepur
2	243	09/12/15	-do-	-do-
3	40	17.02.2016	-do-	-do-

4. Earlier, accused Pipal Singh had opened a company under the name and style of Nicer Green at Zira Gate, Ferozepur City, which is lying closed for last two years and the amount of FDRs got

deposited in the said company has not been returned to any person. They have opened M.K.G. Company by replacing the name of Nicer Green Company for the purpose of committing fraud with public at large. In their business, there is every possibility of joining of other agents or authorities. Preliminary investigation of above said FIR was conducted by ASI Baljinder Singh No.140/FZR and during the course of investigation, accused Gurpreet Singh and one Amritpal Singh were added as accused in the said FIR. The accused Gurpreet Singh was arrested on 17.02.2016 in above said FIR No.40 and on 12.04.2016, Challan under the aforesaid offences was presented against accused Gurpreet Singh in the Court of learned Judicial Magistrate, Ferozepur. Further in the FIR No.191, the accused Pipal Singh was arrested on 14.05.2016 and 11 Cars have been recovered in this case and on 12.07.2016. Supplementary challan was presented against him in the Court of Ld. Chief Judicial Magistrate, Ferozepur. The remaining accused Kulwinder Singh, Anil Kumar, Amrit Pal Singh and Rahul have been granted concession of interim bail by this Hon'ble Court. The accused Mohinder Singh is yet to be arrested in above said FIR and best efforts are being made to arrest him.

5. *That the aforesaid FIR No.243 was registered against present petitioner Pipal Singh and others after conducting detailed enquiry of an application dated 18.08.2015 filed by Bathinda Singh through Incharge, Economic Offence Wing, Ferozepur on the allegations that on 30.06.2004, complainant Bathinda Singh opened one R.D. Account No.N36/6481 in Nyser Green Forest Co. Ltd. and deposited 20 quarterly installments of Rs.520/- each, having its date and amount of maturity as 30.06.2014 worth Rs.50,000/-. However, after the date of maturity, despite obtaining original policy and receipt, the accused Pipal Singh and others did not make the payment of maturity amount to the complainant and made false excuses on one pretext or another and rather declared that they wanted to cheat the complainant and have succeeded in doing so. Now, the above said company has been closed and they are also putting pressure upon the complainant to transfer the said amount in MGK. In the said FIR No.243, a petition bearing CRM-M No.4882 of 2016 for quashing of the FIR is pending in this Hon'ble Court and is now fixed for 13.01.2017. It is pertinent to mention here that in FIR No.243, now, more than 300 people have come forward against accused Pipal Singh as a victim of fraud committed by accused Pipal Singh and others for a sum of Rs.4,59,11,790/-.*

6. *That the aforesaid FIR No.40 has been registered at the instance*

of Manjit Singh son of Jarnail Singh, Tejinder Singh son of Narinder Pal Singh and Baljinder Singh son of Joginder Singh against the accused/petitioner Pipal Singh and others, on the allegations that they deposited money in the companies of accused Pipal Singh through F.D. And R.D. There are many other persons, who have deposited their money for a period of 5 years or 10 years and the total amount comes out to be Rs.1,20,00,000/-. Now, maturity time is over, but the accused are not making payment of maturity amount despite repeated requests, rather the accused gave threats to eliminate them and in this manner, the accused have committed fraud. In FIR No.40, there are 13 accused including main accused/petitioner Pipal Singh, out of which, the accused Gurpreet Singh was arrested on 16.02.2016 and main accused Pipal Singh was arrested on 10.06.2016 and one Car make Swift alongwith 73 registered sale deeds have been recovered from him.

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8. *That from the investigation conducted upto now, it has been found that the main accused Pipal Singh in connivance with the other accused including his wife Surinder Kaur and son namely Gurkirat Singh and two real brothers namely Bakshish Singh and Ranjit Singh has been running six separate companies under the name and style of:-*

- i) Nicer Green Forest Limited,*
- ii) Nicer Green Housing & Infrastructure Developer Limited,*
- iii) N.G.H.I. Developer India Limited,*
- iv) M.G.K. Agriculture Holding Developers India Limited*
- v) J.S. Flowers Developers Private Limited*
- vi) Skynet Land Developers Private Limited*

Out of which, accused Pipal Singh himself is the Managing Director/Director of Nicer Green Forest Limited, Nicer Green Housing & Infrastructure Developer Limited and N.G.H.I. Developers India Limited. During investigation, it has also been found that accused Pipal Singh along with his associates has been running 106 Branches of his above named companies in different States like Punjab, Haryana, Rajasthan, Gujrat, Uttar Pardesh, Bihar, Delhi and Uttrakhand, etc. and thousands of people of these States have been badly affected as a victim of fraud committed by the accused Pipal Singh and his associates worth Crores of Rupees.

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10. *That during investigation, it has been found that accused Pipal Singh has purchased various properties on his own name, in the name of his family members including wife Surinder Kaur and son Gurkirat Singh*

as well as in the name of his above said companies, out of the money belonging to thousands of innocent people residing at above said States which has been collected by accused Pipal Singh along with his associates by means of committing fraud at a largest scale:-

Sr. No.	Kind of Property	Place where the property is situated	Value of Property
1	1500 acres of land	Madhya Pradesh	Crores of Rupees
2	25 acres of land	Jaloun (U.P.)	-do-
3	17.5 acres of land in main highway	Village Golewala, Distt. Faridkot	-do-
4	80 acres of land	Village Bahadur Ke, Distt. Ludhiana	-do-
5	20 acres of land	Village Aashi Ke, Distt. Ferozepur	-do-
6	3 acres of land in the heart of the cirty	Village Mallanwala, Distt. Ferozepur	-do-
7	2.5 acres of land on the road	Village Ratta Gudda, Distt. Tarn Taran	Lac of Rupees
8	Residential Bunglow having an area of 300 sq. yards, 3 storey	Club Road, Punjab Bagh, New Delhi	Crore of Rupees
9	Residential house having an area of 13 Marlas	Sardar Colony, Ferozepur City	Lac of Rupees
10	Residential house, having an area of 3.5 Marlas, in the heart of the city	Post Office Street, Ferozepur City	-do-
11	Plot having an area of 15 Marlas	Guruharsahai (Punjab)	-do-
12	Paper Mill having an area of 12.5 acres	Kathu (J&K)	Crore of Rupees
13	Paper Mill having an area of 8 acres on main highway	Golewala, District Faridkot (Punjab)	-do-

Besides this, there are other numerous proeprties belonging to accused Pipal Singh and his aforesaid companies and deep rooted investigation in this regard is now under progress. The accused Pipal Singh has also sold many properties from time to time worth Crore of

Rupees. It has also come into light that the above said companies of accused Pipal Singh are having about 706 Cars/Vehicles. Out of which, only 12 Cars have still been recovered and remaining Cars/Vehicles are yet to be recovered from accused Pipal Singh and his associates. It has also been found that more than 11,771 people have since been come forward being badly affected as a victim of fraud committed by accused Pipal Singh along with his associates, out of which, most of the affected people have since produced relevant record to the police, out of which, one Harpartap Singh son of Pirtha Singh, resident of Green Avenue, Tarn Taran along with his relatives has invested Rs.3.5 crores in the above said companies of accused Pipal Singh as per the documents produced by him. Many affected persons are still coming ahead day by day as a victim of fraud committed by accused Pipal Singh alongwith his associates including his wife Surinder Kaur, son Gurkirat Singh and two real brothers namely Bakshish Singh and Ranjit Singh, who are still absconders.”

The above is the investigation status report filed by the State showing the magnitude of the fraud in the present cases.

Learned counsel for respondent No.1 contended that respondent No.1 has surrendered his Passport and not only that, his properties have also been ordered to be attached by the order of this Court and therefore, there is no need to cancel his bail. Respondent No.1 has not misused his liberty after grant of bail and therefore, the petitioner would be entitled to continue on bail during trial in these cases. Learned counsel also contended that pendency of other cases is no ground to cancel the bail.

The relevant dates in the present matter are as under as quoted by revisional Court in its impugned order dated 11.01.2017:-

<i>Sr. No.</i>	<i>Dates</i>	<i>Remarks</i>
<i>1</i>	<i>20.09.2016</i>	<i>Charge framed against accused respondent No.1.</i>

Sr. No.	Dates	Remarks
2	04.10.2016	For prosecution evidence. Adjourned to 17.10.2016
3	17.10.2016	Adjourned to 29.10.2016
4	29.10.2016	Adjourned to 10.11.2016
5	10.11.2016	Adjourned to 22.11.2016
6	22.11.2016	Adjourned to 05.12.2016

The first date that was fixed for evidence was thus, 04.10.2016 and it is in this background, application was made that since the trial was not concluded in respect of non-bailable offences, accused-respondent No.1 was entitled to grant of bail. The trial Court vide its order dated 09.12.2016 recorded the following reasons declining to grant bail:-

“Perusal of the file reveals that, accused/applicant is in custody in the present case since 02.08.2016. In the present case, charge against the accused was framed on 20.09.2016 and thereafter, the prosecution has made every single effort to procure its evidence, even by summoning the witnesses concerned, through telephone, as is reflected in the zimini order dated 22.11.2016 and moreover, the presence of witnesses was also sought by using coercive methods, but every time, the summons received back with the report that the concerned police officials are busy in their VIP duties viz. International Kabaddi matches and so called political rallies etc. and that is why, the prosecution witnesses could not be examined. It is crystal clear that the prosecution has made every possible effort to procure the presence of witnesses concerned. In this way, no negligence or any delay can be attributed on the part of the prosecution agency.

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There are extremely serious allegations against the accused/applicant showing his active involvement in multi crore scam, involving huge public money, and number of FIRs lodged against the applicant/accused. Moreover, the case laws relied upon by the learned counsel for the applicant/accused is of no avail to the applicant/accused, as the same does not spell out reasons for granting bail to the accused/applicant. Such serious allegations dis-entitles the accused/applicant for any relief from his Court in the shape of bail. Even

otherwise no useful and practical purpose would be served to consider the bail application as if the accused/applicant is enlarged on bail, there is reasonable apprehension on the part of accused/applicant, tampering with the witnesses, as the complainant of this case is yet to be examined. The present application, thus, stands dismissed as no ground is made out to extend the benefit of bail to the accused/applicant u/s 437(6) Cr. P.C.”

Perusal of the above reasons recorded by the trial Court shows that after framing of the charge, the prosecution made every single effort to procure its evidence, even by summoning the witnesses concerned through telephone etc. as reflected in the zimini orders dated 22.11.2016. Not only that, presence of witnesses was also sought by using coercive methods, but every time, the summons were received back with the report that concerned police officials are busy in VIP duties and International *Kabaddi* matches and political rallies etc. Therefore, the prosecution witnesses could not be examined. The trial Court thus, found that the prosecution has made every possible effort to procure the presence of witnesses and therefore, no blame could be put on the prosecution.

This Court fully agrees with the reasons given by the trial Court above. This Court cannot close its eyes to the everyday happenings in the matter of administration and management of police machinery/jail machinery and other forces. In other words, these forces are being largely used for various events or for providing security at various places or events. There has been a constant increase in the number of incidents of the people gathering together and obstructing the State Highways, National Highways and obstructing roads in the

cities, villages requiring the action by the police or other forces to clear the ways and passes. It is a matter of common experience that the jail staff give explanation to the Court that the accused could not be produced before the Court for want of police personnel or for want of jail staff and so on and so forth. The fact that summons to the witnesses are not promptly served or reports on the summons to the witness etc. are also manipulated or managed and the witnesses are thus, prohibited from coming to the Court cannot be ignored. The Trial Court has thus, taken into consideration the facts, which are writ large. Not only that, the trial Court found on facts that in fact summons were issued and every effort was made to bring the witnesses before the Court.

Section 437(6) Cr. P.C. reads thus:-

***“437. When bail may be taken in case of non-bailable offence. - (1) xx
xx xx***

(2) to (5) xx xx xx

(6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) xx xx xx”

Perusal of the sub-section 6 of Section 437 Cr. P.C. does not admit of any reason that trial was not delayed by the accused or the reasons for delay in trial cannot be attributed to the accused and hence, as a sequel the accused must be released on bail. On the contrary, what the provision shows is that the Magistrate can otherwise direct for

reasons to be recorded in writing. Therefore, the limited scope in the revisional or appellate Court would be to find out whether the reasons to otherwise direct are legal, correct and proper and that they are not perverse. To say that accused be released on bail because accused was not at fault in delaying the trial would be adding the words not to be found in sub-Section 6 of Section 437 Cr. P.C., which is wholly impermissible. It is left to the Magistrate to record reasons in writing. The revisional Court under the impugned order has therefore, clearly made a legal error in holding that respondent No.1 was entitled to grant of bail because no delay could be attributed on his part in delaying the trial.

The next question is whether the provision of sub-Section 6 of Section 437 Cr. P.C. should be held to be mandatory?

Gujarat High Court in the case of **Mukeshkumar Ravishankar Dave versus State of Gujrat**, 2011 (6) R.C.R. (Criminal) 2650 and in the case of **Riza Abdul Razak Zunzunia versus State of Gujarat**, 2009 CriLJ 4766 held that the provision of sub-Section 6 of Section 437 Cr. P.C. is not mandatory. Similarly, Chhattisgarh High Court in the case of **Gulab Singh Banjare and others versus State of Chhattisgarh**, 2011(6) R.C.R. (Criminal) 966 and **Atul Bagga versus State of Chhattisgarh**, 2010 CriLJ 508 held that the said provision is not mandatory. Rajasthan High Court in the cases of **Kalu Ram Vishnoi and State of Rajasthan Through Public Prosecutor**, 2012(28) R.C.R. (Criminal) 289, **Lakkie Lakhbeer**

Singh versus State, 2006(1) R.C.R. (Criminal) 282 and **Vijay Kumar Meena versus State**, 2008(4) RLW 3041 held that the said provision is not mandatory.

Madhya Pradesh High Court (Gwalior Bench) in the case of **Ram Kumar @ Raj Kumar Rathore versus State of M.P.**, 2000 (3) R.C.R. (Criminal) 126 held that sub-Section 6 of Section 437 Cr. P.C. is mandatory.

A single judge of this Court in the case of **Sukhdev Singh versus State of Punjab**, 2009 CriLJ 2941, though, held in Para 6 of the judgment that sub-Section 6 of Section 437 Cr. P.C. mandated that the accused becomes entitled to be released on bail. But this Court also stated that Magistrate can decline bail by recording reasons in writing. Single Judge, then in Para 8 held thus:-

“8. After hearing the learned counsel for the parties and the fact that the petitioner has remained in custody during the said period of more than sixty days from the first date fixed for recording the evidence of the prosecution and no delay has been attributed to him, is held entitled to be released on bail. The reasons given by the trial Court as well as the Additional Sessions Judge, Kapurthala cannot be legally sustained and the petitioner is entitled to the concession of bail under Section 437(6) of the Code.”

The reason given by the learned Single Judge of this Court in Para 8 above shows that since no delay was attributed to the accused, he was entitled to be released on bail. But then that is not the *ratio decidendi* of the said judgment in the context of what has been stated in the last sentence of Para 6 of the judgment. I quote Para 6 of the said judgment, which reads thus:-

“6. The above referred provision mandates that if a case for non-bailable offence is being tried by the Magistrate and the trial has not concluded within a period of sixty days from the first date fixed for taking of the evidence in the case and that the accused had remained in custody during the whole of such period, then he becomes entitled to be released on bail. However, the Magistrate can decline the benefit of the aforesaid provision by recording reasons in writing.”

The said judgment of the learned Single Judge of this Court, therefore, cannot be said to the authority for the proposition that the said provision is mandatory .

As earlier stated by me, the reason that the delay could not be attributed to the accused in the completion of trial would become a good reason to be released on bail under Section 436 Cr. P.C. cannot be read into sub-Section 6 of Section 437 Cr. P.C.

Now coming to the findings by the revisional Court that the provision of sub-Section 6 of Section 437 Cr. P.C. is mandatory. I find that harmonious interpretation will have to be made in the light of the nature of the said provision. In the case of ***State of U.P. versus Manbodhan Lal Srivastava***, AIR 1957 SC 912, the Apex Court stated thus, in Para 11:-

“11. An examination of the terms of Article 320 shows that the word “shall” appears in almost every paragraph and every clause or sub-clause of that article. If it were held that the provisions of Article 320(3) (c) are mandatory in terms, the other clauses or sub-clauses of that article, will have to be equally held to be mandatory.

If they are so held, any appointments made to the public services of the Union or a State, without observing strictly, the terms of these sub-clauses in clause (3) of Article 320, would adversely affect the person so appointed to a public service, without any fault on his part and without his having any say in the matter.

This result could not have been contemplated by the makers of the

Constitution. Hence, the use of the word “shall” in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid.

On the other hand, it is not always correct to say that where the word “may” has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid. In that connection, the following quotation from Crawford on 'Statutory Construction'— Article 261 at p. 516, is pertinent:

“The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other....”

In the case of **Smt. Bachchan Devi & Anr. v. Nagar Nigam, Gorakhpur & Anr.**, AIR 2008 SC 1282, the Apex Court had to say thus:-

“11. The delicate question that remains to be examined is what is the position in law when both the expression “shall” and “may” are used in the same provision.

12. Mere use of word ‘may’ or ‘shall’ is not conclusive. The question whether a particular provision of a statute is directory or mandatory cannot be resolved by laying down any general rule of universal application. Such controversy has to be decided by ascertaining the intention of the legislature and not by looking at the language in which the provision is clothed. And for finding out the legislative intent, the court must examine the scheme of the Act, purpose and object underlying the provision, consequences likely to ensue or inconvenience likely to result if the provision is read one way or the other and many more considerations relevant to the issue.

.....

28. The use of the word ‘shall’ in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall

have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding would be invalid. on the other hand, it is not always correct to say that when the word 'may' has been used, the statute is only permissible or directory in the sense that non-compliance with those provisions will not render the proceeding invalid.

29. Words are the skin of the language. The language is the medium of expressing the intention and the object that particular provision or the Act seeks to achieve. Therefore, it is necessary to ascertain the intention. The word 'shall' is not always decisive. Regard must be had to the context, subject-matter and object of the statutory provision in question in determining whether the same is mandatory or directory. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of the court to try to get at the real intention of the legislature by carefully analysing the whole scope of the statute or section or a phrase under consideration. ... The word 'shall', though prima facie gives impression of being of mandatory character, it requires to be considered in the light of the intention of the legislature by carefully attending to the scope of the statute, its nature and design and the consequences that would flow from the construction thereof one way or the other. In that behalf, the court is required to keep in view the impact on the profession, necessity of its compliance; whether the statute, if it is avoided, provides for any contingency for non-compliance; if the word 'shall' is construed as having mandatory character, the mischief that would ensue by such construction; whether the public convenience would be subserved or public inconvenience or the general inconvenience that may ensue if it is held mandatory and all other relevant circumstances are required to be taken into consideration in construing whether the provision would be mandatory or directory.

30. The question, whether a particular provision of a statute, which, on the face of it, appears mandatory inasmuch as it used the word "shall", or is merely directory, cannot be resolved by laying down any general rule, but depends upon the facts of each case particularly on a consideration of the purpose and object of the enactment in making the provision. To ascertain the intention, the court has to examine carefully the object of the statute, consequence that may follow from insisting on a strict observance of the particular provision and, above all, the general scheme of the other provisions of which it forms a part. The purpose for which the provision has been made, the object to be attained, the

intention of the legislature in making the provision, the serious inconvenience or injustice which may result in treating the provision one way or the other, the relation of the provision to other consideration which may arise on the facts of any particular case, have all to be taken into account in arriving at the conclusion whether the provision is mandatory or directory. Two main considerations for regarding a rule as directory are: (i) absence of any provision for the contingency of any particular rule not being complied with or followed, and (ii) serious general inconvenience and prejudice to the general public would result if the act in question is declared invalid for non-compliance with the particular rule.

31. It is well settled that the use of the word “may” in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word “may” as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word “may”, the court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well settled that where the word “may” involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words directory significance would defeat the very object of the Act, the word “may” should be interpreted to convey a mandatory force. As a general rule, the word “may” is permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word “shall”, which ordinarily is imperative as it imposes a duty. Cases, however, are not wanting where the words “may”, “shall” and “must” are used interchangeably. In order to find out whether these words are being used in a directory or in a mandatory sense, the intent of the legislature should be looked into along with the pertinent circumstances. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The distinction reflected in the use of the word ‘shall’ or ‘may’ depends on conferment of power.”

In the case of **Sharif-ud-Din v. Abdul Gani Lone**, AIR

1980 SC 303, the Apex Court had to say thus:-

“9. The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarised thus: The fact that the statute uses the word “shall” while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the court has to ascertain the object which the provision of law in question has to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. ”

Having regard to the test to determine the mandatory or director nature of the said provision as formulated above by the Apex Court and having look at sub-Section 6 of Section 437 Cr. P.C. that use of word “shall” in sub-Section 6 of Section 437 Cr. P.C. is not conclusive. In view of the further portion of the said provision that the Magistrate has been asked to give reasons to be recorded in writing for not releasing the person on bail, if the trial is not concluded within a period of 60 days from the date of first date fixed for evidence in the case, the provision of sub-Section 6 of Section 437 of Cr. P.C. cannot be held to be mandatory.

Further, it would also be appropriate to quote Para-17 from the Judgment of Gujarat High Court in the case of **Mukeshkumar Ravishankar Dave versus State of Gujrat**, 2011 (6) R.C.R. (Criminal) 2650 as under:-

“17. Therefore, if the provisions of section 437(6) of the Code are closely considered, it appears that enough care has been taken by the

legislature. There is an inbuilt exception provided leaving it to the discretion of the magistrate or the court when the words used are “unless for reasons to be recorded in writing.” These words carve out an exception to the general proposition or the rule which is provided in sec. 437(6) of Cr. P.C. Therefore, on the one hand, when this provision has been made enabling the court to exercise the discretion, the exception is also carved out that while exercising such discretion or considering such application, if such application is turned down, the magistrate is obliged to record reasons for that. In other words, this itself would suggest that when the discretion is left with the magistrate as per the language of section 437(6) itself, it cannot be said to be mandatory as sought to be canvassed.”

Other submissions by the learned counsel for respondent No.1 that bail should not be cancelled for his alleged good conduct cannot be considered as the pure question of law has been answered.

The upshot of the discussion is that the provision of Section 437(6) Cr. P.C. cannot be held to be mandatory and the Magistrate for reasons to be recorded in writing is entitled to refuse to release the accused on bail. In the result, I make the following order:-

ORDER

- i) CRM-M-7568 of 2017, CRM-M-7213 of 2017 and CRM-M-5711 of 2017 are allowed;
- ii) Revisional order dated 11.01.2017 (Annexure P-5) is set aside;
- iii) Consequently, trial Court order dated 09.12.2016 (Annexure P-3) is restored;
- iv) Respondent No.1-Pipal Singh shall surrender to the custody within a period of six weeks from today, failing which he shall be taken into custody by the trial Court.

(A.B. CHAUDHARI)
JUDGE

August 24, 2017

mahavir

Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**